

**REMARKS**

Claims 1-5 were pending. The applicants respectfully request reconsideration and allowance of this application in view of the above amendments and the following remarks.

The applicants appreciate the Examiner's time and the Examiner's supervisor's time in conducting the Examiner Interview of Monday July 17, 2006. In the Interview, although no specific agreement was reached with regard to the claims, it was generally agreed that some differences existed between the configuration of Bovellan, e.g. the locking mechanism which does not provide a direct fixing to a metal portion such as a metal inlet box.

Claims 1-5 stand rejected under 35 USC 103(a) as being allegedly unpatentable over Anhegger, et al., U.S. Patent No. 5,031,302 (hereinafter "Anhegger"), in view of Bovellan, et al., U.S. Patent No. 6,033,006 (hereinafter "Bovellan") and further in view of Goto, et al., U.S. Patent No. 4,573,604 (hereinafter "Goto"). The applicants respectfully request that this rejection be withdrawn for the following reasons.

In the Examiner Interview, the Examiner's position was clarified regarding Anhegger's alleged teaching of a flange. The dictionary definition provided by the Examiner, described in further detail herein below, reveals that the Examiner considers the end portion of the filler pipe of Anhegger to amount to the claimed flange, even though no bump, ridge or plate is shown. Applicants strongly disagree and note that no specific purpose is described or shown in connection with the feature of Anhegger considered to amount to the claimed flange. As a result there is no suggestion or motivation to combine this feature with any other feature from any other reference for any specific purpose, except for the basic function taught for element 1 of Anhegger, e.g. as a filler pipe.

Applicants contend that the Examiner is misinterpreting the teaching of Anhegger and confusing a feature shown in connection with the insert. The flange 6 of Anhegger *is specifically taught as part of the insert* (see, e.g. col 2, lines 29-30) "...insert 3 is provided at its upper open end 5 with an outwardly directed flange 6...." In the claimed invention, the claimed flange *is an integral part of the neck body*. Further, the claimed flange is arranged as a flat plate shaped portion for fastening, which can easily be seen from the drawings. The Examiner appears to be improperly extending the description of flange 6, to the filler pipe 1.

The Examiner, in item 9, on page 4 and 5 of the final rejection, provided a dictionary definition in an attempt to read the claimed flange on the non-descript unnumbered structure of Anhegger near the flange 6 of insert 3. Applicants submit that one of ordinary skill in the mechanical arts would clearly not look to Merriam-Webster Online Dictionary for defining a well understood mechanical term of art such as a flange. It has been established that words in claims are construed in the context of the specification and drawings and not in a lexicographic vacuum and in the context of how a term would be understood by one of skill in the art. Also, it has been established that, for specific terms of art, one of ordinary skill would not rely on a dictionary of general linguistic usage to interpret a term of art as noted in Toro Co. v. White Consolidated Industries Inc., 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999). In this case, the general linguistic usage as provided in Merriam-Webster Online Dictionary cannot be used to arbitrarily change or limit how one of ordinary skill would interpret the term flange.

Applicants have instead supplied a page from Knight's American Mechanical Dictionary (Exhibit A), showing the accepted definition for a flange along with illustrations. In accordance with Knight's, a rib or other irregular shape is considered as a flange when used for strengthening. In the case of guiding such as a train wheel, a rim is considered as a flange, and when used for fastening the term flange connotes a flat plate shape as shown in the illustrations

of Knight's. Thus, when reading the claims in light of the specification and figures, the claimed plate-shaped flange would be clearly understood by one of skill in the art as a type of fastening flange. The picture from Knight's associated with the fastening flange shows an extending flat plate shaped portion.

Applicant's submit that, at best, Anhegger explicitly describes a flange 6 and notably fails to provide a description or number for the irregular shape at the end of filler pipe 1. However, as noted above, flange 6 appears on the insert and not on the neck body as claimed. The irregular shape at the end of the filler pipe 1 of Anhegger, which can only be seen from the drawings and is not described, cannot arbitrarily be said to amount to the claimed flange particularly since there is no way to ascertain from the drawings what the significance of the feature is. Also, since the claimed flange when interpreted in light of the drawings is shown as a fastening flange as described above, the irregular feature cannot be said to amount to a fastening flange.

In the previous response, Applicant suggested that improper hindsight is being used to wishfully find the claimed flange in Anhegger. One need only look to cases such as In re Klien, 987 F.2d 1569, 26 USPQ2d 1133 (Fed. Cir. 1993), to discover that the CAFC frowns on the imputation of a feature into a prior art drawing which bears no resemblance to the claimed feature particularly when it is clear that improper hindsight is being used.

Further, it is established that the drawings can be used to interpret the claims (see, e.g. *Toro Co. v. White Consolidated Industries Inc.*). Thus, the nature of the claimed flange as a fastening flange can be further established using the drawings. Alternatively, the drawings can be used to establish that the Applicant's do not intend that the claimed flange be a bump or collar, which would be unable to be directly fixed to a metal portion associated with a vehicle side

member as claimed. Further, a bump or collar would defeat the operation of the flange since the purpose of the invention is to seal the filler neck if the flange breaks during a collision.

Applicants however have amended claims 1 and 5 to specifically recite that the flange is plate-shaped, which the prior art clearly fails to show.

As noted in the previous response, Anhegger is drawn to an insert 3 into a filler pipe 1. In Bovellan, a filler end 4 of a fuel pipe 3 reaches through a collar 20 to be engaged with locking means 21 (see, e.g. col 2, lines 8 and 39-41) by operation of the shape of filler end 4. It is uncertain whether such engagement is possible in Anhegger giving the shape of the filler pipe 1 as best can be ascertained from the drawings. However Anhegger is notably silent regarding how the filler pipe 1 is fixed to a vehicle. Therefore, applicants submit that since Anhegger fails to teach a flange, and since the operation of the locking means 21 would be rendered inoperable when presented with the filler pipe 1 of Bovellan, one of ordinary skill in the art would not combine the references. Even if the references are properly combinable, which applicants contend they are not, the combination still would fail to teach or suggest the claimed configuration because no flange is taught or suggested in Anhegger in connection with the filler neck body as claimed, despite the Examiner's contentions that the unnumbered undescribed "collar" at the end filler pipe 1 amounts to the claimed flange and particularly given the explicit recitation that the flange is plate shaped.

In the Examiner Interview, the Examiner contends that the locking mechanism 21 of Bovellan amounts to the integral plate shaped flange being fixed to a metal portion associated with the vehicle side member. Applicants have amended claims 1 and 5 to clarify that the plate shaped flange is directly fixed to a metal portion associated with a vehicle side member. None of the references teach or suggest this feature. It is further difficult to see how the clarification raises new issues since the clearly stated purpose of the invention is to prevent leakage of fuel

should the filler neck break at the flange. The alleged correspondence between the locking mechanism 21 and the claimed flange coupled to the vehicle side member would not be clear to one of ordinary skill since such a coupling is resilient and would not lead to breakage, which is ameliorated using the claimed invention. Rather, the locking mechanism 21 would allow the filler neck body to pull away during a crash. Alternatively, during a great impact, forces would be concentrated on the bent portion of collar 20, and breaking could occur on the bent portion, thus protecting the filler neck body.

In adding a third reference to the applied art combination in an attempt to read the features of the claims on the prior art, a fair assumption can be made that the Examiner is using impermissible hindsight reasoning to add Goto to the applied art combination, which, for the reasons already set forth, is improperly motivated. Notwithstanding improper hindsight, the Examiner must provide further evidence that one of ordinary skill in the art would be guided by teachings contained in the references to add Goto to the combination of Anhegger and Bovellan to supply the remaining missing feature, e.g. the claimed gasket ring.

Despite the lack of evidence of a motivation to combine the references, the applicants have amended claim 1 herein to better distinguish over the applied art combination. Because of the limitation that the flange is directly fixed to a metal portion associated with a vehicle side member, the usefulness of the sealing property between the neck body and the retainer, which is maintained even during a vehicle crash and a breakage of the flange, can be better understood.

During a vehicle crash, great impact is applied on the neck body. Since the flange is directly fixed to the metal portion, such as an inlet box of the vehicle, the stress due to the crash of the vehicle is concentrated near the flange, e.g. near the connecting portion of the neck body and the flange. Because of such concentration of the stress, breaking or crack occurs near the

flange. In such a case, fuel can flow into the portion between the retainer and the neck body. However in accordance with the present invention, the sealing member which is disposed closer to the fuel tank than the flange prevents fuel from being released to the outside.

As noted above, Anhegger and thus the applied art combination fails to teach or suggest a flange for directly fixing a neck body to a metal portion associated with a vehicle. Bovellan, at best, describes a collar 20, but the collar 20 is formed separately from fuel pipe 3. Therefore, even if Anhegger and Bovellan are combined, it is impossible to achieve a flange which is formed integrally with the neck body as claimed.

Anhegger further describes a construction in which a sealing member is disposed between a filler neck body and a retainer. However it should be noted that Anhegger relates to an invention concerning a sealing member. Anhegger fails to teach that a filler neck-body has a flange. Bovellan at best describes having a metal retainer for screwing a cap (grip 19) and fails to teach a construction in which a sealing member is disposed between a filler neck body and a retainer. Accordingly, even if a construction could be achieved in a combination of Anhegger and Bovellan in which a sealing member is disposed between a filler neck body having a flange and a retainer, it would be impossible to achieve a construction in which a sealing member is disposed closer to a fuel tank than a flange.

Applicants emphasize that in Bovellan, as noted above, collar 20 is engaged with the neck body 3 by a locking means 21. Thus, in accordance with the teachings of Bovellan, breaking or cracking does not occur near a flange, particularly since applicants do not consider that a flange is taught in the applied art combination. Even if Anhegger and Bovellan are combined, it would be impossible to achieve a construction in which a sealing member is disposed closer to a fuel tank than a flange.

Goto describes a seal 36 that is disposed at an outer end of annular bracket 30 apart from a vehicle, e.g. vehicle body outer panel 34. Therefore in the configuration of Goto breaking or cracking does not occur near any flange. Accordingly, it is impossible to achieve a construction in which a sealing member is disposed at any specific position between a retainer and a neck body.

Accordingly, for at least the reasons as described above, a *prima facie* case of obviousness has not properly been established in that the applied art combination has not been properly supported with evidence of motivation and still fails to teach or suggest all the claimed features such as for example that a plate shaped flange is formed integrally with a neck body and directly fixed to a metal portion associated with a vehicle side member, and that a sealing member is disposed between a retainer and the neck body, and is disposed closer to a fuel tank than a flange of the neck body.

It is respectfully requested therefore that the rejection of independent claims 1 and 5 be reconsidered and withdrawn. Claims 2-4, by virtue of depending from claim 1 are allowable for at least the reason set forth herein above with regard to claim 1. It is respectfully requested therefore that the rejection of claims 2-4 be reconsidered and withdrawn.

In view of the foregoing, the applicants respectfully submit that this application is in condition for allowance. A timely notice to that effect is respectfully requested. If questions relating to patentability remain, the examiner is invited to contact the undersigned by telephone.

Please charge any unforeseen fees that may be due to Deposit Account No. 50-1147.

Respectfully submitted,



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